31st August 1950] [Sri B. Bhima Rao]

case of the Bankers Book Evidence Act. Here, I find that it is limited for the purpose of replacing the original. How could the litigant prove the original produced in Court? So, the same difficulty that is experienced at present will come up again. I am pointing out these to the Hon. Minister so that he could minimise these difficulties and bring in a further amending Bill to make it admissible as in the case of the extracts of the Bankers books and make it evidence for all purposes without any further proof."

DEPUTY CHAIRMAN :—" The question is—

'that the Madras Co-operative Land Mortgage Banks (Second Amendment) Bill, 1950 (L.A. Bill No. 22 of 1950), as passed by the Assembly, be taken into consideration'."

The motion was carried.

Clauses 2 and 1 were put and carried.

The Preamble was put and carried.

THE HON. SRI K. CHANDRAMOULI :—" Sir, I move—

'*that the Madras Co-operative Land Mortgage Banks (Second Amendment) Bill*, 1950 (*L.A. Bill No.* 22 *of* 1950) *be passed*'."

DEPUTY CHAIRMAN :—" The question is—

'that the Madras Co-operative Land Mortgage Banks (Second Amendment) Bill, 1950 (L.A. Bill No. 22 of 1950), be passed'."

The motion was carried.

(4) THE MADRAS AGRICULTURISTS' RELIEF (AMENDMENT) BILL, 1950 (L.A. BILL NO. 23 OF 1950).

* THE HON. SRI K. MADHAVA MENON :—" Sir, I move—

'*that the Madras Agriculturists' Relief (Amendment) Bill*[a], 1950 (*L.A. Bill No.* 23 *of* 1950), *as passed by the Assembly, be taken into consideration.*'

" We made certain amendments to the Agriculturists' Relief Act about two years ago. Certain difficulties have been found in the working of the Act and hence the present amendments are brought forward. Though, the amendments as circulated, may appear to be rather big, I may say that I have put the amendments in the proper place. The amendments are two in principle. One is that, under Explanation III to section 8 of the Madras Agriculturists' Relief Act, 1938, as it now stands, includes not merely the case where there is no change in the identity of the debtor or creditor or where the change is only an apparent one cloaking benami transactions but also the case where an independent loan is raised for the purpose of discharging a previous loan

[a] Printed as Appendix IX on pages 303–309 infra.

and having no other connexion whatever with it. To regard such an independent transaction as a renewal of the original loan will give rise to considerable hardship. Of course, this was raised on the last occasion when I moved the amendment, that such a contingency might come. Now that it has arisen, we have taken steps to rectify it. It is not fair if an independent loan is taken to discharge a prior debt which may be treated as renewal of the original loan. So it is necessary to exclude such transactions from the purview of the Explanation. That is one amendment that I have to move. The other amendment is with regard to cases where the original debt is split up among the heirs, legal representatives or assigns of a debtor or creditor. As at present, the Act is not applicable to such cases. Sir, it is only fair that as long as it is part of the original debt, whether it is split up or not, the Act should be made applicable. It will cause considerable hardship if a debt, merely by reason of its having been split up is to be regarded as not covered by the Act. To remove this hardship, I have brought forward the second amendment. The third amendment is with regard to the usufructuary mortgages. At present, usufructuary mortgage means ' any mortgage by virtue of which the mortgagee is in possession of the property mortgaged, where no rate of interest is stipulated as due to the mortgagee.' A question has now arisen in this connexion. We, lawyers are able to find loopholes in the many Acts that are passed. For instance, suppose there are 100 items of property. Of these, 50 are given possession of and the other 50 are held as hypotheca. The point is whether these are usufructuary mortgages or hypotheca. The High Court has held that such cases are not usufructuary mortgages as part of the property is held as hypotheca and part as usufructuary mortgages. The present Act would not apply in such cases as they are neither complete hypotheca nor complete usufructuary mortgages. My point is that even where a part or portion of the property has been in possession of the mortgagee, the Act should be made applicable. Again, the existing provisions do not include cases where the mortgage provides for the payment of interest either in respect of a subsidiary liability incurred by the mortgagee or in respect of the principal amount secured by the mortgage or any portion thereof, over and above the usufruct from the property. These are some of the difficulties experienced in the actual working of the Act and which were pointed out by Mr. Karanth and others in their areas. Therefore, I have brought forward the third amendment to remove the difficulties that I have just now mentioned so that the Act could include the case of a mortgagee who is in possession of a portion only of the property, the other portion of which might have been hypothecated."

DEPUTY CHAIRMAN :—" The motion is—

' that the Madras Agriculturists' Relief (Amendment) Bill, 1950 (L.A. Bill No. 23 of 1950), as passed by the Assembly, be taken into consideration '."

31st August 1950]

SRI B. BHIMA RAO :—" Sir, I support this Bill and want to say a few words while doing so. With regard to the points mentioned by the Hon. Minister, we felt the difficulties even on the last occasion. We felt in the case of persons who have got the interest of the poor agriculturists at heart, why should their debts be scaled down. This seemed to be quite unjust. Some of us referred to this even then. But somehow, the amendment as it then stood was carried by the Legislature. The unreasonableness of this was pointed out by the High Court at least now and we are rectifying it. I am quite glad about this.

" Now, Sir, with regard to the other, the case of usufructuary mortgage, my complaint is similar to the one I made with regard to the former one. It does not cover all the cases. As a lawyer, you must be aware of some transactions, originally by way of simple mortgage providing for some rate interest, in which, after a certain period the debtor finding himself unable to pay the debt makes a fresh arrangement with the creditor for the discharge of the debt. He tells the creditor, ' I shall place my property in your possession, you enjoy the usufruct thereof till the debt is discharged and then give back all the property to me '. Such cases are quite common in the district in which I practise and I believe some of my friends from the Andhra Desa will support me in that statement. Originally, it will be a simple mortgage. After a term, say five or six years, the creditor finds that the debtor does not have sufficient other resources to discharge the liability and so insists upon the buildings and other properties being placed in his possession till the debt is completely wiped out. This is done verbally and there is no written document, much less a registered document, to prove this arrangement. This kind of arrangement goes on for twenty years and thirty years. If there is a case wherein there is evidence of mortgage for 20 years, then the debt will be proportionately reduced and on payment of the balance the debtor is entitled to get back his property. But if such cases as I have mentioned which are frequent in occurrence, are taken up, what is the remedy? Sir, kindly look into the provisions of the Bill and see whether it covers transactions of such a kind. I am making this suggestion—I do not want to move an amendment—to the Bill of Hon. the Minister for Law. Let my Hon. Friend modify the terminology so that it may include transactions of this nature, which frequently come up before the Courts, and provide for a contingency like that. I am convinced that the amendment proposed to section 9 (A) of the Act will not be much helpful. I would therefore, recommend to the Hon. the Minister in charge of this Bill that instead of bringing in another amendment later on to cover such cases he may incorporate my suggestion in the present Bill itself."

12-30 p.m.

SRI T. PURUSHOTHAM :—" Mr. Deputy Chairman, Sir, I entirely agree with my hon. Friend, Mr. Bhima Rao in his remarks. In the Circars, there are several such cases in which the creditor is in possession of the land and he enjoys the income therefrom. But the property is not returned to the debtor even

after the fulfilment of the conditions of mortgage by him. Some provision must be made to meet such cases so that justice may be done to the affected persons.''

* THE HON. SRI K. MADHAVA MENON :—'' Mr. Deputy Chairman, Sir, my hon. Friend, Mr. Bhima Rao said that though he supported the Motion he was afraid there might be another loophole in the Bill which, as I have understood him, is this—that though a mortgage may appear as a simple mortgage at first, after a few years, it may be converted into a usufructuary mortgage and that it will not come within the purview of the Bill. I am unable to agree with him. If it is a case of a simple mortgage converted into a usufructuary mortgage, then it will fall within the definition of a renewal of a document and the nature of the document may be changed. So in the case of usufructuary mortgages the provisions in the Act relating to them will apply, viz., the provisions of Section 9 (A) of the Act as will be amended if this Bill is passed into law. In the case of simple mortgages the other provision, viz., reduction of interest to five per cent as long as the mortgages remain simple ones, will apply. So, I do not see any difficulty as is mentioned by my hon. Friend. Mr. Bhima Rao. Anyhow, I may say that I shall examine his suggestion also if a contingency is likely to arise and take all possible steps to meet the situation.''

DEPUTY CHAIRMAN :—'' The question is—

' that the Madras Agriculturists' Relief (Amendment) Bili, 1950 (L.A. Bill No. 23 of 1950), as passed by the Assembly, be taken into consideration '.''

The motion was carried.

Clauses 2, 3, 4, 5, 6, 7, 8 and 9 were put and carried.

Clause 1 and the Preamble were put and carried.

THE HON. SRI K. MADHAVA MENON :—'' Sir, I move—

' *that the Madras Agriculturists' Relief (Amendment) Bill, 1950, be passed* '.''

DEPUTY CHAIRMAN :—'' The question is—

' that the Madras Agriculturists' Relief (Amendment) Bill, 1950, be passed '.''

The motion was carried.

(5) THE MADRAS CITY MUNICIPAL (AMENDMENT) BILL, 1950 (L.A. BILL NO. 24 OF 1950).

THE HON. SRI K. CHANDRAMOULI :—'' Mr. Deputy Chairman, Sir, I move—

' *that the Madras City Municipal (Amendment) Bill*[a], *1950 (L.A. Bill No. 24 of 1950), as passed by the Assembly and transmitted to the Council, be taken into consideration.*'

[a] Printed as Appendix X on page 309 infra.